



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534**

December 17, 2007

Jim Falin
1468 Newsome Road
Sevierville, Tennessee 37862

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5176

Subject: DIRECTOR'S ORDER NO. WPC07-0247
VETA HILLS SUBDIVISION
JEFFERSON COUNTY, TENNESSEE

Dear Mr. Falin:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

A handwritten signature in blue ink, appearing to read "V. Janjic".

Vojin Janjic, Manager
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Knoxville
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
JIM FALIN)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
RESPONDENT)	
)	CASE NUMBER WPC07-0247

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

Jim Falin (hereinafter the "Respondent") is the owner/developer of Veta Hills, a subdivision on Lafayette Road in Jefferson County (hereinafter "the site"), and is a resident of the state of Tennessee. Service of process may be made on the Respondent at 1468 Newsome Road, Sevierville, Tennessee 37862.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred,

or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondent has violated the Act.

V.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP), and an appropriate fee.

VI.

Tuckahoe Creek and its unnamed tributary are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified

by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VII.

The Respondent was issued coverage under the TNGCP and assigned Tracking No. TNR132137 on September 6, 2006. Storm water runoff from the site flows into a wet weather conveyance that drains to an unnamed tributary to Tuckahoe Creek.

VIII.

On February 12, 2007, division personnel from the Knoxville Environmental Field Office (K-EFO) conducted a compliance inspection at the site. It was observed that three sediment basins had been constructed at the site, all of which were non-functional. The outfall structures in each basin had been designed and constructed in a manner that did not allow storm water runoff to collect in the basins before being discharged, therefore sediment in the storm water was not settling out and being retained. In addition, a construction entrance had not been installed to inhibit the migration of sediment onto the roadway, as is required by the permit.

IX.

On February 26, 2007, the division contacted the Respondent to discuss the violations observed during the February 12, 2007, site investigation. The division instructed the

Respondent to correct the sediment basins and outfall structures to detain storm water runoff and to install a construction entrance, as required by the permit. The Respondent agreed to make these necessary corrections.

X.

On September 9, 2007, the division conducted a complaint investigation at the site and observed that sediment had migrated from one of the sediment basin outfall structures into a wet weather conveyance and then off-site. The division noted that the Respondent had not implemented any corrections to the sediment basins or outfall structures as had been previously requested by the division and agreed upon by the Respondent on February 26, 2007. The Notice of Coverage (NOC) was not posted on site, nor was the SWPPP available for review as is required by the permit.

XI.

On October 8, 2007, the division conducted a compliance inspection and observed the site conditions to be the same as during the September 9, 2007, complaint investigation. Sediment had migrated from one of the sediment basins into a wet weather conveyance and off site. None of the sediment basins or outfall structures had been corrected so that they would detain storm water runoff. The NOC was not posted on site, nor was the SWPPP available for review.

XII.

On October 24, 2007, the division issued a Notice of Violation (NOV) to the Respondent for violations observed during the October 8, 2007, compliance investigation. The NOV

instructed the Respondent to implement, within 14 days of receipt of the NOV, adequate Erosion Prevention and Sediment Control (EPSC) measures. These measures were to include proper installation and maintenance of the sediment basins and outfall structures, to prevent any additional sediment from leaving the site. The Respondent was further instructed to submit to the division, within 14 days of receipt of the NOV, written notification of the measures taken to bring the site into compliance. The Respondent was also instructed to have the NOC posted on site and to have the SWPPP available for review.

XIII.

On November 5, 2007, the division met with the Respondent on site to discuss EPSC measures that needed to be implemented to bring the site into compliance. The division observed the site conditions to be exactly the same as they had been on the September 9, 2007, complaint investigation and on the October 8, 2007, compliance inspection. The Respondent was again instructed to correct the improperly installed sediment basins and outfall structures to prevent any more sediment from leaving the site. The Respondent was further instructed to stabilize the basin areas and curb-cut outfalls, and again, was instructed to have the NOC posted on site and to have the SWPPP available for review.

XIV.

As of December 5, 2007, the division had not received written notification of EPSC implementation as was required within 14 days of receipt of the NOV issued on October 22, 2007. Due to the Respondent's non-compliance with this request, the division conducted a compliance inspection at the site and observed that none of the corrective actions requested to date had been implemented.

XV.

During the course of the investigation, the division incurred DAMAGES in the amount of TWO HUNDRED TWENTY SEVEN DOLLARS AND EIGHTY TWO CENTS (\$227.82).

VIOLATIONS

XVI.

By violating the terms and conditions of the permit and failing to properly install and maintain EPSC measures at a land disturbance activity, the activities described herein did or were likely to cause an increase in discharge of wastes into waters of the state. Therefore, the Respondent has violated T.C.A. §§69-3-108(b) and 69-3-114(b), which state:

T.C.A. §69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XVII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 15 days of receipt of this ORDER, establish effective EPSC measures on site such that sediment is not allowed to leave the site or enter waters of the state. The Respondent shall submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Division of Water Pollution Control located at the K-EFO, 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
2. The Respondent shall maintain all EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. The Respondent shall, within 30 days of receipt of this ORDER, submit to the division a Corrective Action Plan (CAP) to remove the accumulated sediment from the sediment basin outfalls and install adequate sediment basins and outfall structures in accordance with the SWPPP. The Respondent shall submit the CAP to the K-EFO for review and approval, at the respective address shown in item 1, above. Any deficiencies the division finds upon review of the CAP must be corrected by the Respondent and the corrected

CAP resubmitted to the division within 30 days of notification of the deficiencies.

4. The Respondent shall, within 30 days of written approval from the division, complete all activities outlined in the CAP and submit written notification of completion to the division. The Respondent shall submit the written notification to the K-EFO, at the respective address shown in item 1, above.
5. The Respondent is hereby assessed a CIVIL PENALTY in the amount of EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division within THIRTY (30) DAYS of receipt of this Order.
 - b. The Respondent shall pay THREE THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$3,375.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
 - c. The Respondent shall pay THREE THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$3,375.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
 - d. The Respondent shall pay THREE THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$3,375.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.

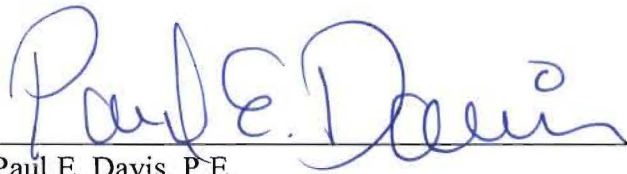
- e. The Respondent shall pay THREE THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$3,375.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 4 above in a timely manner.
6. The Respondent shall pay DAMAGES to the division in the amount TWO HUNDRED TWENTY SEVEN DOLLARS AND EIGHTY TWO CENTS (\$227.82).

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this _____ day of _____, 2007.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allows any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.